

Approved as Submitted: July 20, 2005

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JULY 6, 2005**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:01 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Grzan, Sellers, and Mayor/Chairman Kennedy
Late: Mayor Pro Tempore/Vice-chair Tate (arrived in closed session at 6:05 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

Interim City Attorney/Agency Counsel Siegel announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority:	Pursuant to Government Code 54956.9(a)
Case Name:	City of Morgan Hill v. Hernandez
Case Number:	Santa Clara County Superior Court, Case No. 1-04-CV-020063
Attendees:	City Manager, Interim City Attorney, and Attorney Gale Connor

2.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority	Government Code 54957
Public Employee Performance Evaluation:	City Manager
Attendees:	City Council, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:04 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:00 p.m.

CLOSED SESSION ANNOUNCEMENT

Interim City Attorney/Agency Counsel Siegel announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Tom Kinoshita led the Pledge of Allegiance.

RECOGNITIONS

Mayor Kennedy presented retiring Morgan Hill Unified School District Superintendent Dr. Carolyn McKennan with a Certificate of Appreciation; acknowledging and thanking her for her leadership and years of educational service to the community.

PRESENTATIONS

Kurt Evans, Government Affairs Manager for the Santa Clara Valley Transportation Authority (VTA), provided the City Council with an update on the proposed California High Speed Rail Project. He stated that the California High Speed Rail Authority has been engaged in developing a high speed rail system that would link southern California with northern California. He indicated that the intent of the system is to provide for a transit alternative for the heavily traveled highways and air traffic corridors running from Los Angeles to the Bay Area. He stated that high speed rail is seen as an alternative to relieving congestion in this corridor. He informed the Council that the Authority has been working on high speed rail for a number of years, and that although they have been making progress, there are a number of outstanding issues that they have to resolve. One of these issues is how the high speed rail trains would enter the bay area. He indicated that in January 2004, the Authority released a draft program level environmental document for public comment. In the document, the Authority recommended a southern gateway alignment on how the trains would come from the central valley into the bay area. Under this alignment, the trains would come from Los Angeles, through the central valley via Merced County, over Pacheco Pass into Gilroy and then to San Jose. At San Jose, the trains would split in two ways with half the trains going through the Caltrain corridor and up the peninsula into San Francisco, and the other half running up to the east bay, into Oakland.

Mr. Evans informed the Council that the Authority recommended the southern gateway alignment for a number of reasons. One of the reasons is that the alignment would provide more frequent service to the three major population centers in the bay area (San Jose, San Francisco and Oakland). It is believed that such an alignment would provide the highest ridership, generate more revenue for the system, and would be more efficient to operate, resulting in lower operating costs. After a nine-month period, the Authority

took its draft program level environmental document throughout the State and held a number of public sessions in various locations and received a lot of comments. In September 2004 the Authority decided that, in order to protect itself from a potential lawsuit, it would reopen the issue on how the trains entered the bay area. He informed the Council that the Authority decided to reexamine a series of alignments and identified a broad corridor for their study efforts ranging from Pacheco Pass in the south to an Altamont Pass to the north. He stated that the Authority is now engaged in a two-year effort to look at the various ways you can enter the Bay Area in the study corridor, focusing on Pacheco Pass, Altamont Pass, and/or other options. He informed the Council that this study provides another opportunity for interested parties to comment on a preferred alignment for high speed rail into the bay area. In response to this, VTA joined the Silicon Valley Leadership Group, advocates for Coe Park, San Jose Silicon Valley Chamber of Commerce, and the City of San Jose to form the Silicon Valley High Speed Rail Coalition. He indicated that the purpose of the Coalition is to advocate for the Pacheco Pass alignment.

Laura Stuchinsky, Director of Transportation and Land Use, Silicon Valley Leadership Group, provided the Council with a diagram depicting the alignments that would be studied by the Authority. She indicated that the most northern proposed alignment would come from the central valley to the Altamont Pass into Union City. In order to reach San Francisco, Oakland and San Jose, the rail trains would need to be split into three at this point. The other major route being considered is Pacheco Pass where high speed rail would hit the Caltrain corridor in the Gilroy area and come up the Caltrain corridor into San Jose and then split at this point to go into Oakland and San Francisco. It is felt that it is important that the High Speed Rail Alliance, through the High Speed Rail Authority, chose the Pacheco Pass alignment in order to meet the needs of California, and to meet the objectives of the Authority in order to maximize service to the people of California; maintaining the highest efficiency in services. It is also felt that this alternative would meet the needs of Caltrain; as it would allow the rail system to have a grade separation and electrification, two of the long term goals of Caltrain. It also allows an increase in commuter rail service in this corridor.

Ms. Stuchinsky distributed copies of the principles of why VTA believes Pacheco Pass is the better route to choose and the policy reasons (e.g., to maximize the number of trains serving the region's three largest cities; maximizing the speed, frequency, and ridership of the high speed rail service; and minimizing adverse environmental impacts following an existing transportation corridor rather than creating a new transportation corridor, not passing through or under Henry Coe Park). VTA believes that the route can be one of the other routes or other variations that the Authority will study that minimizes the impacts to the environment and maximizes services. She informed the Council that there are 22 members in the Coalition including Congressman Mike Honda and Congresswoman Zoe Lofgren; Senators Elaine Alquist and Abel Maldonado, and Assembly Members Rebecca Cohn, Joe Coto and Simone Salinas, as well as other individuals and organizations. They are reaching out to other organizations and elected officials to join the coalition. She acknowledged that the City of Morgan Hill has previously adopted a resolution in support of a southern gateway high speed rail route. She said that it is her understanding that there will be a number of organizations and individuals opposed to a Diablo Pass route. She said that for practical reasons, it is believed that Pacheco Pass is the best alignment to pursue. Should the Council wish to support this effort, she requested that it sign on to be a part of the coalition and communicate the City's position to the High Speed Rail Authority.

Mayor Kennedy indicated that he sees a couple of possible issues with the misstatements, particularly along the Caltrain right of way as opposed to Highway 101. He inquired as to the best way to get this input into the process should the Council wish to have input on the specific points that might be different from what has been presented.

Mr. Evans said that specific points can be communicated to the Coalition for its consideration. The Coalition would take a look at the issues raised and whether they would fit into the principles articulated and whether the principles could be adjusted to accommodate these interests.

Council Member Sellers felt that it made sense to join the Coalition and that he will ask the Council to do so later. He said that it sounds as though the Coalition has to undertake a significant effort and inquired whether there was a similar organization in the east bay or the Contra Costa County area that is forming in order to lobby in their direction.

Mr. Evans said that there is a group of organizations advocating for the Altamont Pass alignment primarily led by the Train Riders Association of California. He stated that their main argument is that they are trying to use high speed rail to solve other problems in the region. They are looking at a high speed rail system to co-exist with their commuter and city rail system. The coalition believes that this would defeat the purpose of the high speed rail system of providing a competitive alternative for travel between northern and southern California. Also, the Altamont Pass alternative would not readily serve Silicon Valley as a Pacheco Pass alignment would. It would also depend on the construction of a new bridge across the bay in order to serve San Francisco. The Coalition believes that it needs to have its voice heard in this process, particularly when there are other organizations advocating for an alignment that it does not believe serves the interests of Silicon Valley and the State as a whole in terms of how the system should develop.

Council Member Carr inquired whether a southern gateway alignment would use the existing Caltrain tracks.

Ms. Stuchinsky clarified that the southern gateway alignment would use the same corridor, but would build separate tracks. She indicated that the baby bullet would be able to use the high speed rail tracks and that the regular commute trains would stay on the original tracks. However, in both cases, the tracks would be elevated or depressed and would no longer be at grade level. This would avoid the conflict that is seen with street traffic trying to cross train tracks.

Council Member Carr noted that the Coalition's list of principles includes a bullet point addressing adverse environmental impacts. He felt that having a grade separated crossing would be something that South County would be interested in. He stated that identifying this as one of the principles would be helpful.

Mr. Evans felt that Council Member Carr's recommendation would be consistent with who the Coalition is with regards to Caltrain. He stated that the Pacheco Pass alignment is very compatible in terms of meeting a number of long range goals identified, including a grade separation corridor. He informed the

Council that the Caltrain Joint Powers Board is also looking at high speed rail to make other improvements in the corridor, including possible electrification relieving some of the choke points along the corridor and providing additional capacity at various locations. He felt that Council Member Carr's suggestion is something that is intended by the Coalition in terms of its guiding principals.

Mayor Kennedy indicated that the Council would be considering joining the Coalition under a future agenda action item.

CITY COUNCIL REPORT

Mayor Kennedy indicated that he is an ex-officio member of the Chamber of Commerce. Today, he had the opportunity to attend a Chamber sponsored tour of the Kirby Canyon Waste Management Facility. He stated that he was interested in participating in the tour because he has heard comments and has seen the unsightly white stripe visible from Morgan Hill along the side of a hill in Kirby Canyon. He was told that this would be a temporary membrane. He did not know how long the membrane would remain and be visible, but that he agreed to have a follow up with the District Manager to discuss the visual impacts of Kirby Canyon on Morgan Hill; including the actions that can be taken to address the concerns raised by many members of the community.

Mayor Kennedy stated that he serves as an alternate to the VTA Board of Directors and is also an alternate member to the VTA Policy Advisory Committee. He indicated that recently, there has been a lot of discussion, and articles appearing in the Silicon Valley Business Journal, relating to the Bart San Jose stop. The discussions/articles relate to the services to be provided under Measure A, the ½ cent sales tax approved by the voters for a series of transit projects such as: Bart expansion, expanded Caltrain service to north and south county, funding for operational support of buses and light rail, Caltrain electrification, etc. He stated that with the downturn of the economy and the dot com bubble burst, it became clear that not all projects can be funded with the current ½ cent sales tax. He said that there has been a lot of discussion about what projects will move forward and whether Bart remains the number 1 priority, whether there should be a phased Bart project, whether some projects should be eliminated, and/or which projects should be built first. He indicated that the City of Morgan Hill had expressed its comments in letters to Mayor Gonzalez and VTA. In the letter to VTA, it was suggested that Bart not move forward at the cost of loss of projects that would benefit South County (e.g., reverse Caltrain commute, expanded Caltrain and bus services). The City's letter specifically stated that should there be a Bart route through San Jose, Milpitas and Santa Clara that is not the most cost effective route, but benefits these cities, the jurisdictions that benefit from Bart should pay for the additional costs of this benefit. He clarified that he was addressing the undergrounding of Bart from Alum Rock to Santa Clara. He indicated that this was an issue addressed in a Silicon Valley Business Journal article. The article suggests a private/public partnership on one of the train stations that could help reduce the cost for the undergrounding of Bart through downtown San Jose as an alternative. He stated that Mayor Gonzalez recently put forth an initiative of suggested projects and re-prioritization, offering to eliminate some of the Bart stations in downtown San Jose, and changing one of the light rail service lines to a bus rapid transit line. He views this as a step in the right direction and places a proposal on the table that moves away from the impasse that has been occurring. He indicated that he supported Mayor Gonzalez in his initiative measure, and that he would continue to work with the VTA Board and staff, as well as Council

Member Sellers who serves on the VTA Policy Advisory Committee, in order to protect the City's interest in South County (e.g., reverse Caltrain commute, expanded bus service, people mover project from the Caltrain station to the airport, etc.). He stated, as an Alternate VTA Board Member this year and as a full board member next year, he would continue to advocate for these issues as well as transit services that benefit South County.

CITY COUNCIL SUBCOMMITTEE REPORT

None

CITY MANAGER REPORT

City Manager Tewes indicated that typically, in the months of June and July, he reports to the Council on the number of days the State legislature and the Governor have missed the constitutional deadline for adopting a State budget. He stated that this is day 21 that a State budget has not been adopted. He noted that there is an agreement between the Governor and the legislative leaders that will lead to the adoption and signing of a State budget soon. He informed the Council that the League of California Cities advises as to what is contained in this agreement and how it impacts cities' budgets. 1) The agreement provides that the State will fully fund Proposition 42, a measure approved by voters in California that requires that the sales tax on gasoline be dedicated to transportation purposes. He stated that in recent years, this sales tax has been used to balance the State budget. The proposed deal would fully fund Proposition 42's obligations for transportation. For Morgan Hill, this means approximately \$150,000 annually for street repair and rehabilitation. 2) He noted that in a prior budget agreement, cities and counties gave up some revenues for a two year period and that there was a temporary borrowing by the State of certain revenues that otherwise are due to cities and counties from the Motor Vehicle License Fee. The State agreed to repay \$1.2 billion next fiscal year. He indicated that the City's forecast has shown this revenue coming in next fiscal year. However, this deal advances the fees by one year. Therefore, the City will be repaid this year approximately \$630,000 that would be added to the General Fund. He indicated that this is a cash flow issue as staff has counted on these funds coming in next fiscal year, but they will be coming in this budget year instead. He indicated that staff will be returning to the Council with the appropriate amendments to the City's budget once the State budget is adopted. He said that the City is operating at a \$1.2 million deficit for the current year, as adopted by the Council a couple of weeks ago, but will be at approximately a \$600,000 deficit instead. However, staff's forecast would be that the operating deficit for the subsequent year would be correspondingly higher.

CITY ATTORNEY REPORT

Interim City Attorney Siegel stated that he did not have a report to present this evening.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-10 as follows:*

1. **AWARD OF PROFESSIONAL SERVICES CONTRACT TO PREPARE CIVIL/URBAN DESIGN DOCUMENTS FOR DEPOT STREET RECONSTRUCTION PROJECT**

Action: **Authorized** the City Manager to Execute a Consultant Agreement with BKF Engineers in the Amount of \$308,945 for the Preparation of Civil and Urban Design Documents for the Depot Street Reconstruction Project, Subject to Review and Approval by the City Attorney and Caltrans Pre-Award Audit Process.

2. **PUBLIC WORKS MAINTENANCE AGREEMENT FOR WELL SITE EMERGENCY REPAIRS, MAINTENANCE AND PARTS FOR FISCAL YEAR 2005-2007**

Action: 1) **Approved** New Maintenance Agreement for Emergency Repairs, Maintenance, and Parts for Well Sites; and 2) **Authorized** the City Manager to Execute the Agreement on Behalf of the City.

3. **AMEND PROFESSIONAL SERVICES CONTRACT FOR THE PREPARATION OF AN ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT FOR BUTTERFIELD BOULEVARD**

Action: 1) **Approved** Additional Scope of Work for David J. Powers and Associates in the Amount of \$5,000; and 2) **Authorized** the City Manager to Execute an Amendment to the Existing Professional Services Agreement for Preparation of an Addendum to the 1992 Environmental Impact Report (SEIR) for the Purposes of Extending Butterfield Boulevard South from Tennant Avenue to Watsonville Road, Subject to Review and Approval by the City Attorney.

4. **AWARD OF CONTRACT TO PROVIDE PUBLIC WORKS INSPECTIONS ON AN AS-NEEDED BASIS**

Action: 1) **Approved** a Professional Services Contract with Testing Engineers, Inc. (TEI) to Provide Public Works Inspection Services on an As-Needed Basis at a Not-to-Exceed Cost of \$90,000 for Fiscal Year 2005-2006; and 2) **Authorized** the City Manager to Execute the Contract, Subject to Review and Approval by the City Attorney.

5. **APPROVAL OF SUBDIVISION IMPROVEMENT AGREEMENT WITH EUROCRAFT DEVELOPMENT, INC. (APN 773-08-012)**

Action: 1) **Approved** Subdivision Agreement and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.

6. **RESPONSE TO 2004-2005 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT “TASERS-TRAINING AND TRACKING”**
*Action: **Directed** Staff to Provide the 2005-2005 Santa Clara County Civil Grand Jury with the responses contained in the staff report.*
7. **ADOPT ORDINANCE NO. 1727, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1727, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1685, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING – MALONE/SPEER TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCS COMPETITION. (APN 767-53-012) (DAA-98-11: SPRING-MALONE/SPEER).***
8. **ADOPT ORDINANCE NO. 1728, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1728, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MC-04-25: COCHRANE – LUPINE (APN 728-34-022) (DA-05-02: COCHRANE - LUPINE).***
9. **ADOPT ORDINANCE NO. 1729, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1729, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1718, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-17: HILL - GERA (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (DA-04-04: HILL - GERA).***
10. **ADOPT ORDINANCE NO. 1730, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1730, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN APPROVED UNDER ORDINANCE NO. 1546, NEW SERIES FOR THE TENNANT STATION SHOPPING CENTER LOCATED IN THE PLANNED UNIT DEVELOPMENT (PUD) DISTRICT ON THE SOUTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND TENNANT AVENUE. (APN's 817-06-039, 040 & 41) (ZAA-01-20: Tennant Safeway).***

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 11 and 12 as follows:*

11. AGREEMENT FOR OUTSIDE LEGAL COUNSEL (RICHARDS, WATSON & GERSHON)

Action: **Authorized** *the Executive Director to Execute a Consultant Agreement for Legal Services in Fiscal Year 2005-2006 with Richards, Watson & Gershon in the Amount of \$75,000, Subject to Review and Approval by Agency Counsel.*

12. CONSULTANT AGREEMENT WITH BENCHMARK

Action: **Authorized** *the Executive Director to Negotiate and Execute a Consultant Services Agreement with Benchmark for Fiscal Year 2005-2006 to Provide Project Management Services and Lead Testing for Housing Improvement Programs in an Amount not to exceed \$402,500; Subject to Review and Approval by Agency Counsel.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Mayor Pro Tempore/Vice-chairman Tate requested that item 14 be removed from the Consent Calendar.

Action: *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Carr, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Item 13 as follows:*

13. REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 15, 2005

Action: **Approved** *the Minutes as Written.*

Action: *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Carr, the City Council/Agency Board, on a 4-0-1 vote with Mayor Pro Tempore/Vice-chairman Tate abstaining, **Approved** Consent Calendar Item 14 as follows:*

14. SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 22, 2005

Action: **Approved** *the Minutes as Written.*

City Council Action

PUBLIC HEARINGS:

15. FOX HOLLOW-MURPHY SPRINGS ASSESSMENT DISTRICT PUBLIC HEARING AND ADOPTION OF RESOLUTIONS CONFIRMING FISCAL YEAR 2005-2006 ASSESSMENT INCREASES PURSUANT TO PROPOSITION 218 – Resolution Nos. 5915, 5916, 5917, 5918, and 5919

Mayor Kennedy indicated that he resides within 500 feet of this agenda item. Therefore, he would be stepping down from the dais for this item. He excused himself and left the Council Chambers.

Mayor Pro Tempore Tate identified the procedures to be undertaken for this item, indicating that staff would present the staff report; the public hearing would be opened/closed. Following closure of the public hearing, the Council will move forward with the remaining agenda items to allow the votes submitted to be counted. The Council will reconvene to this item following tabulation of the ballots.

Deputy Director of Public Works Struve presented the staff report, informing the Council that on May 4, the Council approved a resolution setting June 15, 2005 as a public meeting and setting tonight's public hearing date. The May 4 resolution also initiated a Proposition 218 ballot proceeding. He addressed the notification/meeting process; indicating that 706 out of 755 property owners were notified that an annual assessment increase is being proposed, that an annual inflator is to be added, and/or both, to their assessment. He indicated that three community meetings with property owners were held on June 2, 7, and 13 in order to answer questions. Staff also responded to e-mails and phone call inquiries. The Council conducted the "be heard" meeting on June 15. He informed the Council that tonight's meeting is for the purpose of accepting public comments, closing the public hearing, and tabulating the ballots received. He indicated that approximately 323 ballots were returned to the City, a good representation of the ballots sent out. Following the closure of the public hearing, the Council is being asked to adopt the required resolutions per the ballot tabulation in the sub areas where there is not a majority protest. In the event that the sub area(s) where an increase is proposed is not approved, the Council will need to direct staff to prepare and return with a resolution(s). Council adoption of the resolution(s) would be required to abandon the increase in assessment. He informed the Council that in attendance this evening to answer any questions the Council may have is the City's consultant who advises staff on the Landscaping and Lighting Act of 1972 and the contractor who maintains the sites.

City Clerk Torrez certified that notice was duly given of this public hearing, and that ballots were sent to approximately 706 affected property owners.

Mayor Pro Tempore Tate opened the public hearing. No comments being offered, the public hearing was closed.

Action: *By consensus, the Council temporarily **suspended** further discussion/action on this item until such time that the City Clerk concludes counting/tabulating the assessment ballot results in support or opposition to the proposed assessment.*

Mayor Kennedy returned to the Dais.

16. APPLICATION ZA-05-04: TEXT AMENDMENT – RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) STANDARDS AND CRITERIA – *Ordinance No. 1731, New Series*

Planning Manager Rowe presented the staff report, indicating that Measure C requires that the Planning Commission conduct the review of the evaluation criteria following each competition to determine whether changes need to be made to the scoring criteria for subsequent competitions. He informed the Council that it was realized going into the competition this past year that the standards and criteria were not written in a way that was helpful for the downtown; specifically for small vertical use. He stated that the Measure C subcommittee, consisting of three Planning Commissioners, reviewed the scoring criteria for the downtown, and is recommending changes that are geared toward higher density in the downtown and vertical mixed use development. It is the Subcommittee's hope that the recommended changes will result in projects receiving qualifying and competitive scores, allowing the City to award the building allocations that the Council has authorized and set aside for a competition to be held this fall.

Mr. Rowe indicated that on June 8, 2005, the Council held a joint workshop with the Planning Commission to review the proposed changes. The Council directed further changes: 1) to amend the ordinance to exempt downtown projects from having to include below market rate (BMR) units as small unit sizes tend to be affordable versus market rate units built outside the downtown in lower density development (Housing Needs category). 2) Incorporation of up to 25% market rate units within an affordable project. This would provide for a better economic diversity within projects. He indicated that the central core area is established by Measure C and would need to go back to the voters to expand the core. He stated that it was not feasible for the Measure C subcommittee to come up with an alternative. Therefore, the Measure C subcommittee did not recommend changing the Orderly & Contiguous category. He informed the Council that there will be some changes that will be coming before the Council later this month relating to parking standards and changes to zoning that will create additional incentives for new housing to be built within the downtown target area. He stated that the Planning Commission reviewed the final text amendments on June 28, 2005 and voted 4-1 to recommend Council approval of the changes. He clarified that the Measure C subcommittee consisted of three Planning Commissioners: Ralph Lyle, Joe Mueller, and Robert Escobar. Others serving on the Subcommittee include: Bill McClintock; Leslie Miles, representing the downtown association; John Marquez, local builder; and Bonnie Tognazinni with the Morgan Hill Unified School District.

Council Member Carr referred to the Schools Category, item 4, community room for after school programs, an added item. He stated that the City-School Liaison Committee has been discussing ways the City can be assisting the School District. He did not know whether there was discussion about trying to create a fund to provide funding for after school programs.

Mr. Rowe indicated that Ms. Tognazinni and the Measure C subcommittee discussed funding for after school programs. Concerns were raised that there would be a legal nexus between the fee and the residential project. He stated that there was some uncertainty whether an after school program

commitment should be included. Ms. Tognazinni suggested, as an alternative, to provide a facility and extend after school programs in a neighborhood. This was the alternative criteria derived in response to the Boards request.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Council Member Sellers commended and thanked the individuals involved in the process. He felt strongly that affordable housing in the downtown is an important issue because the housing the Council is trying to achieve is appropriate to be placed in the downtown based on the nature of the type of affordable housing to be built. He acknowledged that Morgan Hill does not have this type of housing product in any substantive numbers. He also felt that it was important to recognize that to the extent the City has placed housing in the downtown; the few units constructed in the last 10-15 years have all been affordable. He felt that it was important to achieve a balance in the downtown. In order to be fair, equitable, and economically wise in the proceedings, he felt that it was important to achieve this balance. He recommended that the Council consider this as it proceeds.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1731, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council **Introduced** Ordinance No. 1731, New Series by title only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING ARTICLES II AND III, THE STANDARDS AND CRITERIA AND PROCEDURES OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AS SET FORTH IN CHAPTER 18.78 OF THE MORGAN HILL MUNICIPAL CODE**, by the following roll call vote: **AYES:** Carr, Grzan, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

17. SOLID WASTE PROGRAM CHANGES

Programs Manager Eulo presented the staff report, indicating that staff is recommending Council approval of a series of changes that are designed to complete the City's recycling program. He summarized the proposed changes as follows: 1) Food waste collection to be added to yard trimmings program, including contaminated paper; 2) yard waste to be collected every week; 3) the addition of plastic bags, scrap metal and household batteries to the recycling program; 4) each resident to be provided with a 48-gallon garbage cart free of charge; 5) change the standard recycling container offering to two 64-gallon carts instead of the one cart and one blue bin; 6) individuals can request 32 gallon carts if they prefer; 7) 64 gallon yard trimming carts to be offered; 8) it is to be made clear that cardboard does not need to be tied but does need to be neat and orderly; 9) residential routes will commence 30 minutes later; 10) South Valley will pay for all extra bins to be provided; 11) Jackson Oaks will no longer be subject to hillside rate charges; 12) converting the City's occasional recycle day events into an enhanced coupon system; 13) eliminating the freon charges for items brought to the transfer station with vouchers; and 13) South Valley to provide sweeping services to all city-owned

parking lots. In exchange, the compensation proposed to be provided to South Valley is a 7-year franchise extension. The franchise fee is to be lowered from 16% to 15.5%. He clarified that there would be no impact to the general fund based on a lower franchise fee as it would remain constant at 10%. There is a slight rate increase associated with the changes. He informed the Council that there is a new law in place that requires South Valley to retrofit diesel trucks to provide clean air. The City has agreed to provide South Valley \$20,000 to retrofit the trucks annually out of the environmental programs fund.

Mr. Eulo informed the Council that based on his discussion with Council Member Grzan; he has an amendment to the franchise agreement to suggest. He referred to page 7, 6th line from the bottom regarding the new yard trimmings self-haul program. He noted that the franchise agreement states that the company will send a representative to a home to verify the existence of excess organic material. He said that Council Member Grzan agrees that South Valley can send out a representative to a home to verify that excess organic materials exist, but that it may be better to use the word “may” instead of the word “will” so that the City does not compel South Valley to send a representative to a residence.

In response to Mayor Pro Tempore Tate’s question, Mr. Eulo indicated that food waste would be combined with yard trimmings and that an individual can eliminate the rate being paid on a totter.

Council Member Sellers noted that proposed amendments include weekly pickup of organic and other materials being collected every week.

Mr. Eulo clarified that the recycling program would be conducted bi-weekly and that this is not proposed to change. He stated that every time the City polls citizens, citizens are asked whether they would like to have recycling collected weekly and how much citizens are willing to pay for weekly collection. He informed the Council that approximately 70% of the citizens are satisfied with the bi-weekly collections.

Council Member Sellers requested that it be clarified that the City will not be changing recycling collections, but that the City is providing one more bin that can be collected weekly.

Mr. Eulo noted that it is staff’s recommendation that the Council authorize the City Manager to execute the franchise agreement, subject to review and approval of the City Attorney. He said that it should be noted that there will also be special counsel from Richards, Watson and Gershon, reviewing the franchise agreement.

Council Member Sellers stated that now that the City will be providing the garbage cans, individuals will have garbage cans that they want to dispose of. He felt that it was important for the City to let citizens know that there is an opportunity to discard battered, old garbage cans and that there is a process to do so.

Mr. Eulo informed the Council that South Valley has offered to implement a “sticker system” where they will provide residents with orange stickers that would identify which garbage cans are to be

recycled. He recommended that a “drop off” event be held so that individuals who are willing to self-haul can take old garbage cans to the transfer station.

Mayor Pro Tempore Tate wanted the public to know that plastic bags can now be recycled and that they can be placed in the recycle bins. Yard trimmings can be placed in the yard trimming bins, not in plastic bags.

Council Member Grzan stated that staff has done an outstanding job on this agreement. He said that the agreement includes recycling enhancements in order to meet State requirements, new containers, added pickups, etc. He stated that if residents have a large amount of yard trimmings, they can contact South Valley. South Valley will inspect the cuttings, providing a voucher. With the voucher, a citizen can take the yard trimmings to the transfer station at no cost to citizens. He stated his support of the agreement as it contains benefits for the community and enhancements for the contractor.

Mr. Eulo introduced South Valley representatives in attendance this evening, indicating that they would answer any questions the Council may have.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Mayor Pro Tempore Tate indicated that the City would be receiving enhanced benefits for 70 cents a month and stated his support of the franchise agreement.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Authorized** the City Manager to Execute the Franchise Agreement Subject to the Review and Approval of the City Attorney.*

City Council and Redevelopment Agency Action

PUBLIC HEARINGS:

18. DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) WITH EL TORO BREWING

Director of Business Assistance and Housing Toy presented the staff report, indicating that in January 2004, the Redevelopment Agency selected El Toro Brewing as the developer for a restaurant-brew pub at the former police station located at the corner of Main Avenue and Monterey Road. He noted that the Agency initially issued an RFP for the reuse of the building in the fall of 2003. At that time, the City received two responses to the RFP for a restaurant brew pub. Of the two responses, both had a value of the building at zero dollars due to the cost of improvements. At that time, the Agency Board requested that the proposers return with revised submittals that would include a value for the building. He noted that El Toro Brewing Company returned with a higher value of the building at \$650,000. He stated that it is the Agency’s objective to develop a restaurant-brew pub as a catalyst gateway project for the downtown in the former police department building and not to maximize the sale price of the building.

Mr. Toy indicated that the Agency Board has approved two extensions to the Exclusive Right To Negotiate (ERN) agreement. In January 2005, the Agency Board approved the second of two amendments to the ERN, extending the agreement to June 24, 2005 with the provision for administrative extensions. He stated that the current administrative extension is through July 25, 2005, and the next key performance milestone is obtaining construction financing. He identified the key terms of the DDA before the Agency Board: 1) El Toro will purchase the building for \$650,000; 2) El Toro to operate a restaurant for at least five years in the facility; 3) construction financing to be secured by July 25, 2005; 4) El Toro to pull building permits by September 30, 2005; 5) escrow to close no later than September 30, 2005; 6) construction to commence within 30 days after pulling building permits; 7) construction to be completed 9 months from pulling building permits, but no later than September 30, 2006; and 8) the restaurant-brew pub to be in operation within 12 months from pulling building permits, but no later than December 2006.

Mr. Toy informed the Council that El Toro's lender, Heritage Bank, has indicated that they are processing their loan request for construction financing and anticipate closing the loan in July 2005. He said that the lender would like to see revisions to the DDA and that it is staff's belief that staff will be able to come up with satisfactory revisions to the DDA within two weeks to accommodate the lender's needs as well as meet the needs of the Agency. He stated that El Toro has submitted for plan check and that they would resubmit for plan check in early-mid July 2005. He recommended Agency approval of the resolutions, approving the DDA, and authorizing the Executive Director to execute the agreements.

Council/Agency Member Grzan inquired whether the City has received any of the \$650,000 purchase price for the building and delay time associated with this project.

Mr. Toy informed the Agency Board that the City has received \$60,000.00 in non refundable deposits. He indicated that the initial right to negotiate was approved in March 2004. It was originally thought that it would be 180-day exclusive that would lead to a DDA. He stated that the project is a few months behind from where the City thought it would be.

Council/Agency Member Grzan noted that the project is approximately a year late. He inquired whether the value of the building has increased during this time.

Mr. Toy stated that staff does not believe that the value of the building has increased significantly. He said that the price of the building may have gone up. However, the level of improvements necessary to convert the building to a brew pub would not lend itself to a difference in costs. He indicated that though the appraisal anticipated that there would only be \$400,000 in improvements, El Toro will be installing over \$1 million in improvements. Therefore, it was felt that the improvements would more than capture increases in appraised values. He informed the Agency Board that in the last exclusive right to negotiate, the agreement included additional non-refundable, good faith deposits for further extension requests. Penalties were also included if time frames were not met. He indicated that to date, the applicant has met the time frame. He acknowledged that the applicant requested an extension and contributed another \$20,000 in good faith deposits. He indicated that the lender has requested more time to process the loan, necessitating another \$20,000 in non-refundable good faith deposit. These funds total the \$60,000 non-refundable funds that can be applied toward the purchase price of the building.

Mayor Pro Tempore/Vice-chairman Tate referred to the changes being requested by the lender to the DDA and inquired whether the changes would impact any of the conditions that would need to return to the Agency Board.

Mr. Toy informed the Council/Agency Board that the lender is requesting a consent agreement. The agreement would stipulate the role of the lender in the event they have to step in. He said that staff is trying to resolve some of the terms of the agreement with the lender. It is staff's belief that the remedies and the cures contained in the DDA are more than enough to satisfy the lender, but that there is some wordsmithing that the lender would like the City to take a look at.

Council/Agency Member Sellers noted that the agreement contains a clause that stipulates that the applicant must operate a restaurant for five years. He felt that this clause was a good one for the City as it achieves the Council/Agency Board's goal. He inquired what would happen should the owner not be able to operate the restaurant business for the five years as stipulated.

Mr. Toy responded that the City could consider the project to be in default and consider remedies. He informed the Council/Agency Board that El Toro would be allowed a certain period of time to cure the default and to bring the restaurant back into operation. At some point, the lender would need to know that the owner is in default. He said that it would be unlikely that the City would step in and that it would be the lender who would more than likely step in. He indicated that the lender is subject to the terms of the DDA and has a vested interest. He said that the City would be out of the agreement in terms of any monetary assistance.

Mayor/Chairman Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council/Agency Member Carr and seconded by Council/Agency Member Sellers, the Council/Agency Board unanimously (5-0) **Adopted** Resolution No. MHRA-257, Approving the DDA and Authorizing the Executive Director to Execute the Agreement, Including Making Non-Material Modifications, Subject to Review and Approval by Agency Counsel; and **Adopted** Resolution No. 5932.*

City Council Action

OTHER BUSINESS:

19. RECRUITMENT OF CITY ATTORNEY

Mayor Kennedy indicated that he has heard a general consensus over the last several months from the City Council regarding the desire to proceed with the recruitment of a full time city attorney. He stated his support of the recruitment effort for an in house city attorney, and recommended that the Council take its time going through the recruitment process to make sure that it is done correctly.

Council Member Carr stated that he has never gone through the city attorney recruitment process, and therefore does not have an opinion one way or the other. However, he noted that three council members have gone through the recruitment process for an in house city attorney. He indicated that he has been in office only with a full time city attorney, and the last few months with a contract city attorney. He said that his use of the city attorney's office is minimal, and that he was interested on how best to provide city attorney services that satisfies staff's daily needs. Therefore, he was interested in the City Manager's office and department heads' needs from a city attorney, and how to best meet these needs.

Mayor Kennedy indicated that he and several council members have been through the process of hiring a city attorney. Once the Council decided that it wanted to hire a city attorney, the Council needed to decide whether to retain the services of a facilitator or a recruiting firm/agency. He indicated that the Council elected to hire a recruitment firm. The recruitment firm met with the Council to find out its thoughts; also meeting with the City Manager. The facilitator/recruiter put together criteria that were publicly noticed through the various media. Interviews were scheduled and the Council met with the different candidates at an off site location. The Council then proceeded to make the selection that it thought was best. He felt that this process may work well again. He stated his support of Council Member Carr's suggestion that the Council seek staff's expectations and involve them in the process.

Council Member Carr did not know whether the Council wants a full time in-house city attorney or whether it wants contract services. He did not believe that the Council has answered this question. He indicated that he does not have an opinion one way or another at this time.

Council Member Sellers stated that he was satisfied with the City's current arrangement and with the legal services currently being provided. Therefore, he has a sense that there is not an urgency to go through the recruitment process. He said that the City has been in situations in the past where it was faced with either staying with the current arrangement as a de facto decision, or feeling pressured to make a decision. He did not believe that this was the case at this time. It is possible that the Council could go through the recruitment process only to determine that it was not what it was hoping for; resulting in the continuation of the current arrangement for the foreseeable future. He recommended that this be kept in mind while researching the possibility; deferring a final decision until the Council determines what is available.

Mayor Pro Tempore Tate stated that he is leaning toward having a full time attorney based on the legal work that is conducted by the City. He felt that it would be logical and workable to hire an in-house city attorney. If the Council does not understand the pros and cons of a full time city attorney, he suggested the Council go through the process again. He noted that the Council had input from the previous city manager on the process the Council undertook last time. Although the City is not in a hurry to proceed with the recruitment of a full time city attorney, the City is paying a premium for city attorney services at this time as it is being provided on an emergency and not on a full time basis. Should the Council wish to extend the process, he recommended that the Council look at how it is providing the services to see if it can be fixed for an interim period. He stated that he has no objection to going through a process of determining whether a consensus of the Council is willing to hire a city attorney, even though he has a sense that it is the right thing to do.

Mayor Kennedy indicated that he has served on the Council with both systems where the City had a contract attorney and hired a city attorney. He stated that having a contract city attorney was an unpleasant experience. The City ended up having to take up legal action against the contract city attorney because of a failure to meet a deadline. He noted that the contract city attorney was serving other cities and was spread too thin. He stated that staff had a difficult time meeting with the contract attorney on an as-needed basis. Council contact with a contract attorney was limited and difficult to do. When the Council decided to hire its first full time city attorney, the Council reviewed standards and criteria. He indicated that Gary Baum was the City's first full time city attorney and that he did an excellent job. Prior to Mr. Baum coming on board, the City had 35 outstanding cases and that when he left the City; the City had four open cases. He agreed with Council Member Tate that a full time city attorney is the preferred way to go. However, his comments are not a negative reflection on the firm of Siegel and McClure as they are doing an excellent job as the City's current contract attorneys.

Council Member Sellers inquired as to the process should the Council wish to retain the services of a recruitment firm.

City Manager Tewes said that the process would depend on the level that the Council wishes to be involved in the selection process. He noted that last time; the Council requested staff obtain proposals from recruitment firms experienced in this area. A subcommittee of the City Council reviewed the proposals, interviewed one or more of the proposed firms and then selected a firm to assist with the recruitment process. He indicated that staff or a subcommittee of the Council can handle this process. He recommended that at the very least, the City seek proposals and indicated that he can handle this portion of the process.

Action: *On a motion by Council Member Sellers, seconded by Mayor Kennedy, the City Council **directed** staff to request proposals from qualified recruitment firms as a first step in moving toward consideration of the selection of a city attorney.*

Council Member Grzan said that there is not anything the City does today that does not involve some interpretation of law or procedures in place. He felt that it was important for City staff to be able to call up and lean upon the advice of a city attorney when problems arise. He felt that the City would have an advantage if staff could quickly and easily contact the city attorney and obtain an opinion on a question of legality as opposed to waiting a week for a return visit from a contract city attorney. He stated that he was more inclined to have a full time attorney. This is not a reflection on the legal services being provided by Dan Siegel or his firm as the City has been satisfied with the legal representation that it has had. He felt that it was important for the community to have a full time attorney on board that the City can call upon for their expertise as the city continues to grow, develop, have issues with Coyote Valley, VTA, high speed rail, etc. He recommended that the City move forward and hire a full time city attorney.

Mayor Kennedy stated that he recalled a situation when the City was on the verge of losing a \$4 million lawsuit as the City was relying on a contract attorney. He did not believe that the contract attorney managed the case properly. He stated that having a city attorney on staff gives the City someone who

can manage individual/special cases and select an outside attorney to provide different areas of expertise. He stated his support of the motion.

Mayor Pro Tempore Tate stated that he supports the motion. However, he noted that the Council has not had the discussion of whether it supports proceeding with the recruitment of a full time city attorney.

Council Member Sellers stated that it was his intent, with the motion, to start the recruitment process. It was his hope that the City would undertake the process and that the Council would have a chance to interview potential full time attorneys. He stated that he was supportive of retaining the services of a full time city attorney, but would be open to other options. He said that it may very well be that the Council will go through the process knowing that it wants a full time city attorney only to find that none of the applicants meet the expectations of the Council. If this happens, the Council can consider starting over.

Council Member Carr felt that it was clear that four Council members were leaning toward one direction. He stated that he would try to answer the question as to whether the City should retain the services of a full time attorney. He did not believe that the motion should be held based on the answer to his question. He stated that he was interested in staff's thoughts on legal services as his needs from a city attorney's office are minimal. He did not believe that it was fair to assume that every contract attorney will cause the same problems identified by Mayor Kennedy.

Mayor Kennedy recommended that City Manager Tewes provide feedback on his perspective of Council Member Carr's questions.

City Manager Tewes informed the Council that the executive team had this similar discussion 3-4 months ago and that there was a division on whether or not to have a full time city attorney or contract attorney. He said that there was consensus that there was no rush to proceed with a full time city attorney at this time. As a management group, staff was supportive of the decision made by the Council in May to take its time to think through this question carefully. From his perspective, he felt that it was important to provide legal services to the city government and to support the management team with a full time city attorney. He noted that one of the policy questions outlined is whether the City should have a higher level of legal services. He stated that the City is well served by the Jorgenson law firm. However, they have limited office hours and are available via electronics and phone. When issues arise, staff cannot walk down the corridor to ask a question of the city attorney. In a contract arrangement, the contract attorney is not a full time participant in the management team of the City. He felt that it would be appropriate to look at the functions of the city attorney's office. He did not believe that the City would be able to find someone who knows every aspect of municipal law. The issue of management of legal services is important. He stated that it would be preferable to have a city attorney on board who listens to discussions of cost controls as the City proceeds through various legal services. However, it is critical to have the right person on board and who has the background on the issues important to Morgan Hill; someone with experience in running a city attorney's office and ability to work well with the Council and entire management team. Therefore, it will be important to get the right profile established; and finding the right candidate is as important as is the decision on having a full time city attorney.

Vote: *The motion carried unanimously (5-0).*

20. BOARD AND COMMISSION INTERVIEW AND APPOINTMENT PROCESS

City Manager Tewes presented the staff report, indicating that the Council has established July 20 for interviewing to fill several vacancies. When the Council discussed whether or not to schedule this date, the Council expressed their concerns about past practices with respect to the procedures the Council used in considering and reaching consensus on the Mayor's recommended appointments. At the last Council meeting, the Mayor indicated a willingness to develop a proposal on this process and bring it back to the Council. He indicated that he, the Mayor, and City Clerk Torrez had met and discussed several different options, taking into account the issues raised by Council members. He informed the Council that the Mayor's report establishes some principles and a specific process that should guide in the selection process. He indicated that the Mayor would outline the principles and process.

Mayor Kennedy indicated that there were several areas that would be helpful to enhance the recruitment process as listed on page 469 of the agenda packet. He recommended that the Council actively seek out candidates and make sure that the Council's expectations are made clear, especially as they relate to the questionnaire. He clarified that the interview process would be very similar to what is in place at this time. The Council would conduct interviews, ask clarifying questions, and the applicants would then be excused. The Council is to discuss the characteristics that it is looking for in a candidate, including new ideas, new voice, experience, etc. Each Council member would then identify their choice of the top candidates to fill any vacancy(ies), plus one. The mayor would then consider the Council member's top candidates, returning to the Council at a following meeting with recommended appointments. If there were some issue that required additional discussions or evaluation, he said that it would be possible for the mayor to modify the recommendation. The mayor's recommendation would come back to the Council, with the Council having the opportunity to discuss recommended appointments and make changes if it was deemed necessary. He stated that the process identified would allow some additional time in the process to avoid some of the problems the Council experienced in the past.

Council Member Sellers stated that he would like the Council to have some latitude in terms of the questions asked during the interviews. He felt that it would be appropriate to include written questions prior to the interview and that Council members are allowed to ask appropriate questions at the interview. He did not believe that it was legal to ask the applicants to be excused as interviews are conducted at a public meeting. Therefore, he did not believe that this step needs to be included in the process as the applicants can stay to the conclusion of the interview process. However, the Council can make it clear to applicants that the Council will not be making a decision that evening and that the Council will be having further discussions. They are welcome to stay for the discussions, if they so choose. He felt that whoever is the mayor needs to use good judgment and make sure that they do not deviate from the process. He had a question regarding the process. He inquired whether a council member would have recourse should they feel strongly about one candidate and find the balance of the candidates acceptable. He understands trying to get away from the hierarchy, but not allowing for this may end up with a least common denominator.

City Manager Tewes said that in the meeting with the Mayor, City Clerk, and himself, this concept was discussed. One possible approach was to urge that Council members to provide top picks for the number

of vacancies plus one; leaving the option for the Council members to vote for fewer candidates if this was important to a council member. This would reflect the council member's top vote. However, by voting for only one candidate, the council member may not get his/her choice appointed at the end of the process.

Council Member Grzan noted that with the proposed process, there is still a chance of appointing all candidates to fill vacancies (e.g., 3 applicants submit applications to fill 3 vacancies). He recommended that the Council consider a minimum score an applicant has to achieve in order to be appointed. He expressed concern that a single issue candidate may come forward and promote a specific activity or may be upset about a situation. The Council may be in a position where it has to appoint this individual as there is no way for the Council to exclude a candidate like this. He felt that the Council should have a means to exclude a candidate, if necessary. He recommended that individuals who do not meet the minimum standards not be appointed and that the Council go out and recruit good candidates to serve on its commissions.

Mayor Kennedy felt that the proposed process would address Council Member Grzan's concern. Should the Council believe that there are only two good candidates to fill three vacancies, the Council could vote for only two candidates.

Mayor Pro Tempore Tate noted that this suggestion would necessitate modification to the bullet point that reads: "Each council member would identify their top candidate(s) to fill the vacancies. Council Members can vote for any number of candidates to fill vacancies up to plus one."

Council Member Sellers said that he has a lot of faith in the democratic process and felt that the recruitment/appointment process is part of the democratic process as well. He stated that he has been impressed by the quality of the candidates who come forward. He did not want to set a precedent where individuals feel they were singled out and excluded, as it may discourage individuals from applying to fill vacancies and would politicize the process more than it is today. He stated that he understood Council Member Grzan's concern, but felt that the Council should conduct interviews/appointments in a way where it will not set individuals up. He felt that the first bullet of the recommendation that suggests that the Council conduct active outreach for candidates is important, not within the small circle of acquaintances, but to go out to the community and conduct its recruitment efforts. He also felt that the Council needs to diversify its boards and commission. He stated that he prefers to take this approach rather than try to worry about individuals who may be under qualified. Even if a candidate is under qualified, he noted that the City has a 7-member commission. If there are 1-2 individuals who are not carrying their weight or have marginal view points, they will not prevent the commission from getting their work done.

Mayor Kennedy noted that one of the problems that the Council has experienced is the timing in the recruitment to fill vacancies on boards and commissions as appointments are staggered. He noted that the Council would be considering merging recruitment timing.

City Clerk Torrez noted that some cities conduct interviews for all boards and commission the same day. Should the Council consider one day to conduct its interviews, it would give the Council flexibility in

appointing individuals accordingly. Should the Council not believe that a candidate is suited for a particular board or commission, they may be a better fit and can be considered for appointment to another board or commission within the organization. She would like to see the City utilize the services of individuals who step forward, as they took the initiative to be of service to the City.

Mayor Kennedy recommended that the Council move forward with the recommended process. He recommended that Council Member Grzan's concern be taken up as a separate issue in addition to actively seeking out candidates. The Council can look at changing the timing of the process so that it can receive a pool of candidates. If a candidate is unsuccessful in their offer to serve on one committee, the candidate would be available to be appointed to serve on another committee. He suggested that he, the City Manager and City Clerk Torrez look at the timing of the process, returning to the Council with this as a separate issue.

Council Member Carr stated that the Council is making the process difficult and burdensome for candidates willing to come forward. He felt the Council should make it easier for individuals to come forward and serve the City. He agreed that there are a couple of things that can be done to improve the interview/appointment process. The Council can work on the questionnaire to come up with specific questions. If it is the Mayor's intent for the Council to interview candidates one night and return at a later date, giving the mayor time for reflection, he recommended that the time for reflection be on the written questionnaire where everyone is answering the same questions. This would give the Council time to review the responses to questions before the interview and get a good feel for the candidates. He felt that the process where the Council interviews one evening, tallying recommendations and deferring appointment to a future meeting date would politicize the process. He felt that this would create the opportunity for an individual to have their friends contact the Council in support of an appointment, and would take away from the process. He did not believe that candidates take the time to respond to the questionnaire and that the questionnaire is more about their contact information. He recommended that the Council make the questionnaire an important part of the interview process. He recommended that a month or two prior to commencing the recruitment process, the Council add an agenda item where it discusses the qualities of the boards, commissions and candidates that it is looking for. The Council can have these public discussions where individuals can understand how they can fit and the qualities being sought for the different boards and commissions. He expressed concern about the delay and the other hurdles being considered for someone to be successful at being appointed on a volunteer commission.

Mayor Kennedy said that it is also possible to politicize the process under the current process. Therefore, politicizing the process can occur, no matter which alternative is followed.

Council Member Sellers acknowledged that politicizing the appointment process can exist by waiting a week to appoint. He expressed concern with the number of candidates a council member can identify and not being able to distinguish the best, second best, etc. He stated his support of giving this process an opportunity for the next process, incorporating the change suggested by Council Member Tate of changing the word "would" to "could." The Council would be able to evaluate whether the week long delay would improve the process. He felt that it was important to recognize that without the Council's concurrence, the City cannot proceed with the Mayor's appointment. He felt that it would be a rarity that

any mayor would deviate from the selection process as this is his biggest concern for politicizing the interview/appointment process.

Mayor Pro Tempore Tate said that he sees the potential for the concerns raised by Council Member Carr. He felt that the one week delay may solve some of the problems that the Council has experienced and would like to give this process a try. He supported having the Council identify their preferred candidates plus one. He recommended that the second to the last bullet be modified as follows: “Council to discuss recommended appointments; and make changes, as necessary.” This amendment would not result in automatic ratification of the Mayor’s appointment recommendation.

Action: *Mayor Pro Tempore Tate made a motion, seconded by Council Member Sellers, to **Approve** the Mayor’s Fundamental Principles to Guide the Board and Commission Recruitment, Interview and Appointment Process, as amended.*

Council Member Carr referred to bullet point 5, “Council to discuss the characteristics it is looking for in a candidate.” He felt that this bullet point would be more valuable if done before the interviews.

Mayor Kennedy clarified that after the interview process, the Council would discuss the characteristics of each candidate and not what each Council member is looking for in a candidate. The Council would use this process in assisting Council members in making its selection.

Mayor Pro Tempore Tate stated that he would recommend that the Council discuss the characteristics it is looking for in a candidate prior to conducting interviews as it would be a valuable point.

Mayor Kennedy recommended that this be added as an additional bullet point.

Vote: *The motion carried unanimously (5-0); **including** an additional bullet point that would allow Council discussion of the characteristics it is looking for in a candidate prior to interviews.*

Action: *The City Council **reaffirmed** that the interviews for boards and commission are to take place on July 20 and that the meeting is to commence at 6:00 p.m.*

Mayor Pro Tempore Tate indicated that the Council should have its discussions of its expectations of the candidates prior to conducting interviews.

City Council Action

PUBLIC HEARINGS (Continued):

15. FOX HOLLOW-MURPHY SPRINGS ASSESSMENT DISTRICT PUBLIC HEARING AND ADOPTION OF RESOLUTIONS CONFIRMING FISCAL YEAR 2005-2006

ASSESSMENT INCREASES PURSUANT TO PROPOSITION 218 – Resolution Nos. 5915 through 5920

Mayor Kennedy excused himself from the Dias.

City Clerk Torrez reported the Assessment District balloting results, indicating that out of 16 zone districts, the following five districts did not receive a majority protest (passed): Fox Hollow/Murphy Springs; Sunnyside Stonegate; Llagas Creek; Sparkhawk; and Stonecreek.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Kennedy absent, **Adopted** resolutions declaring the results of the assessment ballot tabulation, increasing the assessments for the Fox Hollow/Murphy Springs Landscaping Assessment District for the following sub areas: Fox Hollow/Murphy Springs (Resolution No. 5915), Sunnyside Stonegate (Resolution No. 5916), Llagas Creek (Resolution No. 5917), Sparkhawk (Resolution No. 5918) and Stonecreek (Resolution No. 5919).*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote, with Mayor Kennedy absent, **Adopted** Resolution No. 5920, ordering the levy of assessments and approving amended engineer's report, as amended per the ballot results this evening.*

City Manager Tewes noted that by inference, some of the sub areas received majority protests and that the records should reflect a majority protest.

City Clerk Torrez reported the following assessment sub areas receiving majority protest: Jackson Meadows No. 7; Conte Gardens; Mill Creek; Jackson Meadows 6a and 6B; Diana Estates; Hamilton Square; Oak Creek; Rosehaven; Parson's Corner; La Grande; and Saddlewood.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote, with Mayor Kennedy absent, **Directed** staff to return with a resolution for sub areas that received majority protest.*

Deputy Director of Public Works Struve informed the Council that when he returns to the Council, he would identify impacts to the zones where a majority protests were received.

Mayor Kennedy returned to the Dais.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Council Member Sellers requested that staff agendize the discussion of City participation in the Silicon Valley High Speed Rail Coalition; following discussion by the Council's Regional Transportation Committee.

Council Member Carr indicated that he would like to make sure that an at-grade crossing takes place and that it be a part of any support the Council gives. Also, to be identified is the increase in train traffic through Morgan Hill with the high speed rail.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 8:57 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY